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COMMENTS REGARDING: San Luis Valley Calumet-Comanche Transmission Project

Cole, Susan <Susan.Cole@aporter.com>

Mon, Sep 21, 2009 at 4:09 PM

To: "info@socotransmission.com" <info@socotransmission.com>

Cc: "Douglas, Matthew" <Matthew.Douglas@aporter.com>

On behalf of Blanca Ranch, LLC and Trinchera Ranch, LLC, we respectfully submit the attached comments and exhibits on Tri-State Generation and Transmission Association, Inc.'s proposed San Luis Valley Calumet-Comanche Transmission Project. The Exhibits to this letter will be sent in separate emails to follow.

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Soco Transmission <socotransmission@gmail.com>

Exhibits (Email 1A) to COMMENTS REGARDING: San Luis Valley Calumet-Comanche Transmission Project

Cole, Susan <Susan.Cole@aporter.com>

Mon, Sep 21, 2009 at 5:00 PM

To: "info@socotransmission.com" <info@socotransmission.com>

Cc: "Douglas, Matthew" <Matthew.Douglas@aporter.com>

Emails 1 and 2 with exhibits have been returned due to size. Attached is email 1A and 3 smaller emails as 1B, 2A, 2B will follow.

Email 1A of 5.

On behalf of Blanca Ranch, LLC and Trinchera Ranch, LLC, we respectfully submit Exhibits 1-5 of the comments on Tri-State Generation and Transmission Association, Inc.'s proposed San Luis Valley Calumet-Comanche Transmission Project. Additional Exhibits to the comment letter will be sent in separate emails to follow.

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5 attachments

 **Exhibit 01_(DN_141836_1).PDF**
455K

 **Exhibit 02_(DN_141839_1).PDF**
23K

 **Exhibit 03_(DN_141863_1).PDF**
174K

 **Exhibit 04_(DN_141842_1).PDF**
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 **Exhibit 05_(DN_141844_1).PDF**
335K

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September 21, 2009

BY EMAIL & U.S. MAIL

Dennis Rankin
USDA, Rural Development Utilities Programs
Mail Stop 1571, Room 2244-S
1400 Independence Avenue, SW
Washington, DC 20250

Re: Comments of Blanca Ranch, LLC and Trinchera Ranch, LLC on Tri-State
Generation and Transmission Proposed San Luis Valley-Calumet-Comanche
Transmission Project

Dear Mr. Rankin:

On behalf of Blanca Ranch, LLC and Trinchera Ranch, LLC (collectively "Trinchera" or "the Ranch"), we respectfully submit these comments on Tri-State Generation and Transmission Association, Inc.'s ("Tri-State") proposed San Luis Valley-Calumet-Comanche Transmission Project ("Project"), for which it is requesting federal funding from the USDA Rural Utilities Service ("RUS"). Trinchera has expended considerable time and effort in preparing its comments, and we ask that you give careful consideration to them. Please add these comments, and the accompanying exhibits, to the administrative record.

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I. Interest of Trinchera Ranch

Trinchera believes that securing reliable energy for the San Luis Valley is vitally important. Trinchera also strongly supports the efforts to develop renewable energy sources in Colorado such as solar and biomass production and supports the construction of a reliable and safe electric transmission system. Trinchera believes that these goals can be met through a planning process that is informed and open, looks at these issues on a regional scale, and gives San Luis Valley residents real opportunity to provide input. Regional planning is particularly critical for this Project due to its extensive area of impact in the San Luis Valley and other areas along the proposed transmission route and because of the Project's impact on the state's natural resources, which play a vital role in Colorado's economy as well as its environmental and cultural heritage. In support of RUS's obligation to evaluate the Project's effects on the human environment pursuant to the National Environmental Policy Act ("NEPA"), Trinchera offers these NEPA scoping comments addressing environmental considerations for the region, and when applicable, to the Ranch itself.

As a route through the Ranch appears to be the only transmission route considered by Tri-State at this time, the following provides a brief overview of the Ranch history and its significance in the San Luis Valley region.

The Ranch comprises approximately 172,000 acres in the San Luis Valley. Straddling U.S. Highway 160 between Fort Garland and La Veta Pass, Blanca Ranch to the north and Trinchera Ranch to the south have been operated as one unit since the 1980s. Together, these ranches commonly are known as Trinchera Ranch.

The Ranch is entrenched in the history of southern Colorado. Bought in 1969 by the Forbes family, the Ranch was originally maintained as a traditional working ranch but has since evolved into, in the words of the Colorado Wildlife Commission, "a wildlife property that has few, if any equals in the United States." See 2008 Colorado Wildlife Commission Resolution [hereinafter CWC Resolution] (attached as Exhibit 1). The Ryland family, who have submitted their own comments in this matter, have managed the Ranch for two generations. In 2007, the new owners purchased the Ranch from the Forbes, pledging to continue the "outstanding traditions of conservation, habitat protection and improvement, and hunting and fishing that have become the recognized trademark of ownership of the Ranch." *Id.*

At its lowest point, the Ranch is 7,831 feet in elevation and at its highest (at the summit of Blanca Peak) 14,345 feet. As the fourth highest mountain in Colorado, Blanca Peak is considered not only the most prominent and identifiable feature of the Ranch but also the most dominant feature of the San Luis Valley. In addition to Blanca Peak, there are several other

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recognized peaks positioned on the Ranch including Mount Lindsey and Little Bear, both of which are over 14,000 feet, as well as Harrison, Napoleon, Trinchera, and Cuatro Peaks.

Colorado Conservation Partnership, a group of prominent land conservation organizations, recently designated the southern Sangre de Cristo mountain range (encompassing the area from Trinchera Ranch to the New Mexico border) as a “priority landscape” under its “Keep It Colorado” program. *See* Colorado Conservation Partnership, *at* <http://www.keepitcolorado.org/>. The designation means that this area, which is in significant part made up of the Ranch, is one of the highest priority areas in the state for conservation. *See* Colorado Conservation Partnership: Conservation Map, *at* <http://www.keepitcolorado.org/map.html>. Colorado Conservation Partnership describes the southern Sangre de Cristos as “[s]teeped in history, surrounded by magnificent peaks,” and encompassing “some of the most spectacular views in the country and abundant, critical wildlife habitat.” *See* Colorado Conservation Partnership, Priority Landscapes: Summaries, *at* <http://www.keepitcolorado.org/landscape.html>. Indeed, for anyone driving along Highway 160 and Highway 159 (both Scenic Byways), the Ranch allows for some of the most stunning natural views in the nation.

The Ranch supports a rich diversity of ecotypes, ranging from alpine tundra to subalpine forests, from pinyon-juniper woodlands, to sagebrush grasslands, and from grassy glacial canyons to irrigated meadows. Numerous creeks and streams originate and flow through this land, including several that begin high in the Sangre de Cristo mountains.

This rich diversity of ecotypes and clean water supports a similarly rich diversity of wildlife that thrive on the Ranch. Big game species -- including elk, deer, antelope, bighorn sheep, and bear -- abound. Abundant habitat is available for a variety of bird species, including a number of state and federally threatened and endangered species. And the various creeks and streams support many known and potential cold water fisheries.

For four decades, the Ranch owners have made it a priority to maintain and improve the Ranch’s wildlife species through a variety of programs:

- Of particular significance, over 81,200 acres of the Ranch were donated as a conservation easement in 2004. To this day, it remains the largest conservation easement in Colorado. This conservation easement, held by Colorado Open Lands, preserves the property in perpetuity for open space and wildlife habitat. *See* CWC Resolution.
- For more than ten years, the Ranch has been engaged in an active rehabilitation program along Cottonwood Creek in order to reintroduce the Rio Grande cutthroat trout, a state species of special concern and a candidate for federal listing under the Endangered Species Act, and the Rio Grande sucker, a state endangered species. Due to the success

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of these efforts, the Colorado Division of Wildlife ("CDOW") has drawn from this population of cutthroat trout to reintroduce it elsewhere in Colorado and New Mexico. *See id.*

- Bighorn sheep, Colorado's state mammal, were reintroduced on the Ranch in a cooperative agreement with CDOW. The bighorn sheep program has been so successful that CDOW has transplanted bighorn sheep from the Ranch to other locations in Colorado and Utah. The population on the Ranch is now considered "one of the largest and most valuable herds in the State." *See* CWC Resolution; CDOW: Private Ranch Finds Benefits in Working with DOW on Sheep Project, Feb. 8, 2005, *at* <http://dnr.state.co.us/newsapp/press.asp?pressid=3366> (attached as Exhibit 2).

The Ranch has provided and continues to provide educational opportunities to CDOW and students from Colorado's universities and local schools. The Ranch also provides various recreational activities. Through CDOW's Ranching for Wildlife program, of which the Ranch was the first participant, the Ranch opens its doors every year to the public, free of charge, for big game hunting. The Ranch also offers opportunities for private fly-fishing vacations. And, as mentioned by the Colorado Wildlife Commission, on numerous occasions the Ranch has allowed its use for special events and programs that encourage public participation in outdoor recreation. *See* CWC Resolution.

In light of these contributions, the State of Colorado formally recognized the Ranch and its owners in 2008 for the work that they have done throughout the years to "preserv[e] and improv[e] thousands of acres of valuable wildlife habitat on the Ranch" as well as promote the continuation and proliferation of many wildlife species. *See id.* In connection with this recognition, Governor Bill Ritter stated in a letter to the Forbes family that the family "helped create one of Colorado's most valuable environmental assets." *See* Letter from Gov. Bill Ritter, Jr. to the Forbes Family (July 21, 2008) (attached as Exhibit 3).

In short, Trinchera Ranch is one of the few private properties in Colorado about which it can be legitimately asserted that protection and preservation is a matter of statewide significance. Construction of a massive transmission line through this unique and valuable property should not be considered lightly. Not only would it dramatically alter the region's visual landscape, it would potentially deplete the habitat and wildlife that so many have ardently tried to preserve. Significant vegetation would be lost. Formerly clean water would be clouded. Extensive soil disturbance would lead to increased susceptibility to erosion. Available habitat for the region's numerous wildlife species would be lost and fragmented. Wildlife species would be stressed, displaced, or simply depleted.

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For all these reasons, Tri-State should carefully evaluate not only the impacts that construction of a transmission line would cause on the Ranch and to the many people that benefit from the Ranch but also the various alternatives that could avoid disrupting this pristine setting in the San Luis Valley.

With this background, Trinchera sets forth its comments below.

II. Summary of Comments

As indicated in the Federal Register notice, RUS has requested Tri-State prepare an Environmental Assessment ("EA") for the Project. The Project is, in part, composed of new 230-kilovolt ("kV") and 345kV transmission lines, a new substation north of Walsenburg, expansion of three existing substations, and construction of several communication facilities. According to Tri-State, "The primary purpose for the proposed action is to improve the electric service and increase reliability for Tri-State and Public Service customers in the San Luis Valley and Front Range areas. The proposed action would also provide a transmission outlet for renewable energy generation in the San Luis Valley." Meeting Notice, 74 Fed. Reg. 38391 (August 3, 2009).

RUS must ensure that Tri-State complies with NEPA as well as other relevant federal and state statutes, regulations, guidelines, and executive orders. Tri-State must accurately define the purpose and need for the proposed Project as well as prepare a detailed analysis of the proposed Project and all practicable alternatives. Together these requirements should enable RUS to assess the potential environmental impacts of the proposed action as well as any reasonable alternatives.

Tri-State's current effort at evaluating the Project has numerous deficiencies. Most critically, it fails to present the sufficient detail required by NEPA. In particular, it lacks any discussion of alternative reasonable routes as well as any comparison of the direct, indirect and cumulative impacts as between the proposed Project and other feasible alternatives. Additionally, Tri-State has not accurately defined its purpose and need for the Project. Finally, the scoping meetings did not provide the public a meaningful opportunity for comment. Trinchera believes that when a hard look is taken at the environmental consequences of the proposed Project, RUS will find significant direct, indirect, and cumulative impacts that warrant development of an Environmental Impact Statement ("EIS"). Accordingly, Trinchera strongly urges RUS to immediately require an EIS for this Project, one of the largest of its kind in Colorado.

B-009-001

B-009-002

B-009-003

B-009-004

B-009-001: Project Alternatives (In Review)

Your email/letter/comment form has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-002: Purpose and Need (Revision Required)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-003: Public Involvement Process (Revision Required)

Your email/letter/comment form has been received and your comment noted. The project is in the planning and environmental review stages. Current project information will be available on the RUS project website, <http://www.usda.gov/rus/water/ees/ea.htm> and the Utilities' project website, <http://www.socotransmission.com/>.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-004: NEPA Process (Revision Required)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has requested financial assistance from the USDA Rural Utilities Service (RUS), for their anticipated ownership interest in the proposed San Luis

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III. Detailed Comments

A. NEPA Requires Consideration of a Reasonable Range of Alternatives

I. Overview of Tri-State's Current Alternative Evaluation

A properly-drafted EA must involve a discussion of a reasonable range of alternatives to the proposed action. *See Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002); *see also* 42 U.S.C. § 4332(2)(E). The "reasonableness" of alternatives considered necessarily is judged with reference to an agency's objectives for the project. *See Colo. Envt'l Coal. v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999).

B-009-005 | The sheer size and scope of the Project, the technology and implications of the renewable resources that the Project proposes to support, and the significant legal concerns the Project is already facing in the Colorado Public Utilities Commission ("PUC") proceeding require Tri-State to consider a much broader range of alternatives than it has done to date. *See* 7 C.F.R. § 1794.12 (stating that the "reasonableness" of alternatives is judged with respect to "the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled").

B-009-006 | In its current analysis, Tri-State has effectively defined the purpose of the Project so narrowly that its accomplishment only can be achieved by a single alternative -- its preferred route running east to west. *See New Mexico ex rel. Richardson v. Bureau of Land Mgm't*, 565 F.3d 683, 708 (10th Cir. 2009) (stating that it would not be sufficient to only evaluate constructing a project as conceptualized or not constructing a project at all); *Davis*, 302 F.3d at 1119 (noting that an agency cannot define the purpose of a project so narrowly as to foreclose reasonable consideration of alternatives and effectively limit accomplishment of the purpose to the single, preferred alternative). Indeed, by offering to RUS only minor variations within the east-west route and no routes in any other direction, Tri-State has presented its preferred alternative as a *fait accompli*.

B-009-007 | Not only must a reasonable range of alternatives be listed, analysis of these alternatives must be sufficiently detailed so as to permit "a reasoned choice of alternatives as far as environmental aspects are concerned." *See Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1277 (10th Cir. 2004); *Dombeck*, 185 F.3d at 1174; *see also* RUS Bulletin 1794A-601 at 1 ("An acceptable [EA] must be sufficiently detailed to enable RUS to . . . b. determine if all practicable alternatives have been considered; c. evaluate the environmental effects of . . . the alternatives; d. assess the significance of those effects . . ."). Tri-State has failed in this task as well. No attempt has been made to compare the environmental consequences between the

Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State's ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA).

RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/environ.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-005: NEPA Process (In Review)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has requested financial assistance from the USDA Rural Utilities Service (RUS), for their anticipated ownership interest in the proposed San Luis Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State's ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA).

RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/environ.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-006: NEPA Process (In Review)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has requested financial assistance from the USDA Rural Utilities Service

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B-009-007 | proposed project and individual alternatives, including the no-action alternative. *See* RUS Bulletin 1794A-601 at 7 (“Environmental issues that need to be discussed under NEPA and those environmental factors singled out for special attention under other applicable Federal laws, regulations, and [executive orders] should be discussed for the proposed project and reasonable alternatives.”). Without providing a comparison of alternatives for consideration or the resources potentially affected in those alternatives, Tri-State completely abrogates RUS’s ability to consider appropriate mitigation measures available with each alternative. *See* 7 C.F.R. § 1794.17.

B-009-008 |

Much less has its analysis “include[d] all resources of significant concern that could be affected” or “[m]aps of sufficient detail to identify important geographic features.” *See* RUS Bulletin 1794A-601 at 6; *see also id.* at 6 (noting that the EA “should describe the environment of the area to be affected by the proposed project as well as the area to be impacted by reasonable alternatives”). The maps that Tri-State did provide are woefully insufficient, even lacking relevant information previously included in maps prepared by Tri-State in 2007.

B-009-009 |

With this overview, the following sections specifically detail the deficiencies in the analysis of alternatives that Tri-State has performed to date.

2. Failures of Tri-State’s Current Alternative Evaluation

Tri-State’s June 2009 Alternative Evaluation (“2009 AE”) discusses four separate types of alternatives to the Project: (1) no action; (2) additional generation capacity; (3) demand side management; and (4) additional transmission capacity. *See* 2009 AE at 3-8 to 3-20. The deficiencies in Tri-State’s analysis of these alternatives, as well as its failure to analyze other alternatives or mitigation measures, are discussed in detail below.

No Action

B-009-010 |

An adequate EA must address in detail the no action alternative. *See* RUS Bulletin 1794A-601 at 6. Although Tri-State considers a no action alternative, Tri-State rejects it on the basis that it would not comply with mandatory NERC reliability standards and it would not satisfy Tri-State’s obligations to its Members and Network customers. *See* 2009 AE at 3-8. However, Tri-State fails to elucidate what those standards or obligations are or why the proposed Project is necessary to meet them. This question should be addressed in a revised no action discussion.

B-009-011 |

In addition, Tri-State should consider predictable actions which might satisfy the Project’s objective in the event that this Project is not pursued. *See* Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,038

(RUS), for their anticipated ownership interest in the proposed San Luis Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State’s ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA).

RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/environ.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-007: NEPA Process (In Review)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has requested financial assistance from the USDA Rural Utilities Service (RUS), for their anticipated ownership interest in the proposed San Luis Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State’s ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA). RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/environ.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-008: NEPA Process (In Review)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has

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(Council on Env'tl. Quality 1981), at <http://www.nepa.gov/nepa/regs/40/40p3.htm> ("Where a choice of 'no action' by the agency would result in predictable actions by others, this consequence of the 'no action' alternative should be included in the analysis."). A number of foreseeable actions come to mind. First, it is likely that Tri-State's partner in the Project, Public Service Company of Colorado ("PSCo"), would still develop renewable energy resources in the San Luis Valley. This development could potentially help to provide system reliability without the need for new transmission capacity spanning the state. Second, if new transmission capacity is not built, small-scale distributed solar generation might be installed as an alternative to large, utility-scale generation. Such distributed solar generation might be sufficient to alleviate reliability concerns and provide energy to meet peak agricultural demands. Finally, utility-scale solar or wind technology might be developed in areas that are served by existing transmission lines or otherwise do not need the Project. For instance, PSCo's own study shows that the area near Pueblo may be better suited to the construction of solar generation than the San Luis Valley. See Xcel Energy, *An Effective Load Carrying Capability Analysis for Estimating the Capacity Value of Solar Generation Resources on the Public Service Company of Colorado System* 10 (submitted to the PUC in Docket number 07A-447E on Feb. 10, 2009) (attached as Exhibit 4) ("Thus, even though the annual energy capacity factor from a solar facility located in Alamosa is higher than the same plant located in Pueblo, generation from the Pueblo plant is better correlated to Public Service's peak loads."). Tri-State's consideration of these actions, as well as other predictable actions, needs to be refined and further analyzed.

Additional Generation Capacity

Tri-State considers emergency backup generation from gas turbines as a potential alternative but dismisses it, finding that it is neither "effective" nor "economic." See 2009 AE at 3-8. In rejecting this alternative, Tri-State refers back to its June 2008 Alternative Evaluation and Macro Corridor Study ("2008 AE/MCS"). The 2008 AE/MCS, however, did not consider how this alternative stacked up against the current proposed configuration of the line, which is longer and more expensive than the project being proposed in the June 2008 study. The current configuration differs in that it requires building a new substation, a second circuit, and an additional 20 miles of transmission line between Alamosa and Walsenburg. An analysis based on incorrect and outdated assumptions is not adequate for purposes of NEPA. Accordingly, Tri-State should reevaluate the ability of emergency backup generation from gas turbines to meet its stated objective.

Tri-State's rejection of renewable energy resources is similarly inadequate. See *id.* In its 2008 AE/MCS, Tri-State acknowledged not only that "several renewable energy projects . . . are in the planning stage" but also that "the potential for voltage collapse would be reduced" if renewable energy projects were developed. See 2008 AE/MCS at 3-3. Tri-State concluded that

requested financial assistance from the USDA Rural Utilities Service (RUS), for their anticipated ownership interest in the proposed San Luis Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State's ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA). RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/environ.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-009: Correction to Data (In Review)

Your email/letter/comment form has been received and your comment noted. The information you provided will be verified and project materials will be updated accordingly.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-010: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-011: Project Alternatives (In Review)

Your email/letter/comment form has been received and your comment

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renewable energy projects create “a potential that the energy supply to the San Luis Valley would be improved and the primary purpose and need would be met.” *Id.*

Despite this statement from only a year ago, Tri-State summarily rejects this alternative in the 2009 AE, reasoning that solar is “intermittent.” *See* 2009 AE at 3-8. This reasoning is questionable because PSCo has requested proposals for solar with storage -- that is, solar resources that would have the capacity to provide back-up generation during periods of low and no light. *See* Public Service Company of Colorado 2009 All Source Solicitation: Request for Proposals for Semi-Dispatchable Renewable Capacity Resources at 4 (attached as Exhibit 5) (seeking proposals from “facilities that utilize intermittent eligible energy resources and employ an integral, supplemental technology that serves to lessen the intermittency effects of the energy source. The supplemental technology may allow energy production to be shifted to hours of greater value to the Company and/or may provide generation capacity to the system during peak load periods Examples of eligible technologies include solar with storage or solar thermal with fuel backup/hybridization.”). Indeed, in its formal Request for Proposals, PSCo classifies solar with storage as a “semi-dispatchable” resource. *See id.* at 1 Table 1. Despite being aware that this type of solar generation is being proposed, Tri-State fails to consider whether solar with storage could alleviate reliability concerns in the San Luis Valley.

Therefore, Tri-State should further evaluate the possibility of solar generation as well as other new generation alternatives to meet its stated objectives, including whether development of renewable resources is likely, the extent to which the existing system can accommodate new generation, and the feasibility of solar with storage to be part of a solution to improve reliability in the region.

Additional Transmission Capacity

An adequate analysis of alternatives should discuss “[a]lternative corridors, routes, or locations (sites).” *See* RUS Bulletin 1794-601 at 6. The 2009 AE identifies five “alternatives” for providing additional transmission capacity. Each of these proposed routes begins at the San Luis substation and terminates at either the Walsenburg substation or a new Calumet substation, located six miles to the north of Walsenburg. *See* 2009 AE at 3-11. The line would then flow north to Comanche. These alternatives differ in terms of voltage and whether the line would be single- or double-circuit.

Despite styling these as alternative routes, the routes are largely identical. Every route begins in San Luis and ends approximately 100 miles to the east, cutting through Trinchera Ranch, over pristine La Veta pass, and through other regions of significance in the Project area. No alternatives that would avoid the impacts to the current study area were considered by Tri-State. Within the study area, Tri-State arbitrarily avoids any route that would cross public

noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-012: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-013: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-014: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in

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property, presumably to avoid additional permitting. Thus, to the extent that providing an outlet for renewable energy resources requires greater transmission capacity, Tri-State has “effectively reduced the discussion of environmentally sound alternatives to a binary choice between granting or denying an application.” *Buck Mountain Cmty. Org. v. Tenn. Valley Auth.*, 2009 WL 1393354, at *12 (M.D. Tenn. May 18, 2009) (quoting *Save Our Cumberland Mountains v. Kempthorne*, 453 F.3d 334, 338 (6th Cir. 2006)); see *Richardson*, 565 F.3d at 708 (same).

B-009-018 To satisfy its mandate to consider a reasonable range of alternatives, Tri-State must consider true alternative routes for additional transmission. This should include an evaluation of upgrading or rebuilding existing lines to the north from the San Luis Valley, along an existing transmission corridor, as well as constructing new routes to the north. Additionally, low-cost improvements to the existing transmission system in the San Luis Valley could be a reasonable alternative to the proposed project, but Tri-State never considered this option. For example, Dynamic VAR STATCOM systems or synchronous condensers/compensators could address the reliability issues in the San Luis Valley at significantly less expense and with significantly less environmental impact than the proposed Project. Finally, Tri-State must fully evaluate the prospect of undergrounding new transmission lines to reduce the environmental impacts of the Project and must evaluate alternatives that follow existing transmission corridors.

B-009-019

It is true that Tri-State considered various northern alternatives in the 2008 AE/MCS but rejected each alternative, finding that the east-west route was the most cost effective.¹ However, the Project as currently proposed is dramatically different from that envisioned in June 2008. The cost comparison done by Tri-State in 2008 is entirely inapplicable to the current Project. The 2008 comparison grossly underestimated the length of the proposed line by at least 20 miles. In 2008, Tri-State incorrectly estimated the line to be 75 miles, and now estimates it to be 95 miles.² By Tri-State’s own estimates, this discrepancy would add \$8,000,000 to the cost of the line. See 2008 AE/MCS at 2-1, 3-9, 3-10; 2009 AE at 2-6. The current Project, unlike the one proposed in 2008, also involves the construction of a new substation, which according to Tri-

¹ It should be noted that the 2009 AE does not purport to incorporate any of these alternatives into its discussion. But even if Tri-State intended that the June 2008 discussion be incorporated, such an incorporation is both illogical and unacceptable. The June 2008 AE/MCS was created for a different project with a dramatically different scope and purpose. Assumptions relied on for the project as envisioned in June 2008 do not apply to the Project as envisioned today.

² Tri-State’s Senior Vice-President for Transmission confirmed that the straight line analysis used in the 2008 AE/MCS, which was the basis for the 75 mile estimate, would have resulted in the proposed transmission line going through a national park and over a 14,000 foot peak (Blanca Peak). A feasible route avoiding those areas added an additional 20 miles to the line. See Deposition of J. Bladow at 100:15-101:12 (attached as Exhibit 6).

late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-015: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-016: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-017: Route Refinement > SLV-Calumet (In Review)

Your email/letter/comment form has been received and your comment noted. Route refinement for the proposed project and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-018: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation

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State would cost at least \$1,000,000. *See* 2008 AE/MCS at 3-10. Additionally, the 2008 proposal was for a single-circuit 230kV line, which is significantly less expensive than the current proposal for a double-circuit 230kV line. Thus, the cost comparison done by Tri-State in 2008 is insufficient to constitute an actual consideration of alternatives to the current proposal.³

B-009-020

B-009-021

If Tri-State were to compare an east-west line to another configuration to the north, Trinchera believes that not only would the northern route meet Tri-State's objectives but also would be more environmentally sound, less impactful, more cost-effective, and easier as well as quicker to build. A northern route would cause minimal direct, indirect, and cumulative impacts because it would cross fewer ecologically sensitive areas and existing right-of-ways/transmission corridors could be used. *See* Letter from CDOW to Tri-State (August 12, 2008) (attached as Exhibit 8) (stating that use of existing right-of-ways and existing disturbances minimizes impacts to wildlife). Moreover, a northern route would be less costly because it would be significantly shorter than the current proposal, could likely meet the same needs with a single-circuit line (rather than the double-circuit line proposed by Tri-State), and no new substations would be required. Finally, a northern route could be constructed more quickly because the line would have to travel less distance, could use existing substations and existing right-of-ways/transmission corridors, would cross fewer ecologically sensitive areas, and would likely face less opposition to land use permits.

Additionally, a northern route would, in part, provide access to the Front Range through the Proposed Section 368 Energy Corridor, which roughly runs parallel to Highway 50. *See* Map of Proposed Section 368 Energy Corridors: Colorado (attached as Exhibit 9). As required by Section 368 of the Energy Policy Act of 2005, this Energy Corridor has been collectively designated by the Department of Energy, Department of Interior, Bureau of Land Management, Department of Agriculture, Forest Service, and Department of Defense. *See generally* 16 U.S.C. § 824 *et seq.* It represents the "preferred location . . . of electricity transmission and distribution facilities" in Colorado. *See* Final Programmatic Environmental Impact Statement, Designation of Energy Corridors on Federal Land in the 11 Western States, at S.2 (attached as Exhibit 10).

³ Furthermore, Tri-State recently admitted that a key component of its cost estimate for the proposed line in 2008 was in error and required correction. *See* Response of Tri-State Generation and Transmission Association, Inc. to Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC, at Answer to Trinchera Ranch 3-1 (attached as Exhibit 7) (noting that an error in calculation raised the cost of the line from \$208,433 per mile to \$218,319 per mile). That correction, coupled with the additional \$9,000,000 or more in cost associated with the current project, would result in several northern routes proposed in the 2008 study, all of which were found by that study to meet the stated reliability need, being more cost effective than the current proposal.

measures including the no action alternative will be addressed in the Environmental Impact Statement.

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B-009-019: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-020: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-021: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

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B-009-022 | This Section 368 Corridor designation is not addressed in Tri-State's current analysis of alternatives but must be fully evaluated for purposes of the EA.

For all of these reasons, it is clear that Tri-State should engage in significant new analysis of the potential of northern routes, as well as other reasonable configurations, to meet its stated objectives for the Project.

Combination of Alternatives

B-009-023 | An adequate analysis of alternatives must consider whether a combination of alternatives can satisfy a project's objectives. *See Davis*, 302 F.3d at 1121-22 (noting that agency's failure to consider a combination of alternatives "represents one of the most egregious shortfalls of the EA"); *see also* RUS Bulletin 1794A-601 at 6. The following combinations, not meant to be comprehensive, could potentially meet the objectives of the Project:

- Additional renewable energy resources + emergency backup generators
- Emergency backup generators + upgrading the existing lines, transformers and/or other elements of the system
- Additional renewable energy resources + demand side management
- Upgrading existing lines + demand side management

Each of these alternatives should be considered as well as any other reasonable combination.

Mitigation Measures

Without providing a comparison of alternatives for consideration or the resources affected in those alternatives, Tri-State abrogates RUS's obligation to consider appropriate mitigation measures available with each alternative. RUS policy requires that discussion of mitigation measures essential to render the impacts of the proposed action not significant be included or referenced in the NEPA decision document. *See* 7 C.F.R. § 1794.17. Therefore, each alternative should be developed to include appropriate mitigation measures such that RUS may properly evaluate the available alternatives. As appropriate, Tri-State should develop the following mitigation activities among each alternative:

- B-009-024** |
- Restore impacted habitat for fish and wildlife populations and mitigate negative effects of the Project.

B-009-022: Route Refinement (In Review)

Your email/letter/comment form has been received and your comment noted. Route refinement for the proposed project and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-023: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-024: Cumulative Impacts (In Review)

Your email/letter/comment card has been received and your comment noted. Potential cumulative impacts and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

- B-009-024**
- Mitigate impacts on wildlife from construction.
 - Detail mitigation steps that will be taken to minimize air quality impacts.
 - Mitigate conflicts with other uses of private lands.

Resource Maps

- B-009-025** Tri-State's analysis of alternatives should "include all resources of significant concern that could be affected" and "[m]aps of sufficient detail to identify important geographic features." See RUS Bulletin 1794A-601. The resource maps provided by Tri-State do not meet this requisite. Of concern, the 2009 map set lacks nine map types present in the 2007 set (e.g., maps of black bear habitat, lynx habitat, and inventoried roadless areas). See San Luis Valley Electric System Improvement Project: Resource Map Book (October 2007) (attached as Exhibit 11). In addition, there are discrepancies in many of the maps that are provided. Although the 2007 Jurisdiction map shows the location of the Mato Vega fire, the 2009 map does not. See *id.* Similarly, the 2009 Areas of Critical Environmental Concern ("ACEC") map neglects to include the Sand Castle ACEC. See *id.* Furthermore, many of the maps are simply incomplete. For example, the maps do not show the summer range, summer concentration, or winter range of elk, nor do they show the summer range or winter range of mule deer. Finally, there may be discrepancies between Tri-State's mapping of prime and unique farmlands in Costilla County and those lands that should be classified as such.
- B-009-026**
- B-009-027**
- B-009-028**

3. Summary of Tri-State's Current Alternative Evaluation

- B-009-029** In sum, Trinchera believes that the following alternatives, at a minimum, must be considered:
- No-Action.
 - Demand side management / conservation techniques. See RUS Bulletin 1794A-601 at 6 (noting that "[l]oad management and energy conservation" should be discussed).
 - Additional generation capacity.
 - Gas turbine generators or other emergency backup generators.
 - Renewable resources, e.g., solar or wind.

B-009-025: Correction to Data (In Review)

Your email/letter/comment form has been received and your comment noted. The information you provided will be verified and project materials will be updated accordingly.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-026: Correction to Data (In Review)

Your email/letter/comment form has been received and your comment noted. The information you provided will be verified and project materials will be updated accordingly.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-027: Correction to Data (In Review)

Your email/letter/comment form has been received and your comment noted. The information you provided will be verified and project materials will be updated accordingly.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-028: Correction to Data (In Review)

Your email/letter/comment form has been received and your comment noted. The information you provided will be verified and project materials will be updated accordingly.

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B-009-029

- Any other potential new generation.
- Additional transmission capacity.
 - Upgrade / rebuild of existing lines. *See, e.g., Buck Mountain Community Org. v. Tenn. Valley Auth.*, 2009 WL 1393354, at *12 (M.D. Tenn. May 18, 2009).
 - New northern routes.
 - Other alternative transmission routes.
 - Undergrounding new transmission lines.
- Purchase of power from other utilities. *See* RUS Bulletin 1794A-603 at 6.
- Other reasonable alternatives suggested by state and federal agencies, including, but not limited to, the Fish and Wildlife Service ("FWS"), the National Marine Fisheries Service ("NMFS"), and CDOW.
- Combination of the above.

B-009-030

Tri-State's current analysis of alternatives not only does not analyze the majority of these various alternatives in sufficient detail (*e.g.*, there is absolutely no consideration of the direct, indirect or cumulative impacts of various alternatives), it simply fails to consider many of them (*e.g.*, rebuilding / upgrading the existing line, acquiring power from other utilities, or a combination of alternatives). As a result, the range of alternatives presented for consideration by RUS has been impermissibly narrowed.

Because a fair and robust consideration of alternatives is not only critical to adequately assess a project's environmental impacts, but is mandatory under the NEPA statute and implementing regulations as well as RUS guidelines, Tri-State must spend considerable time and effort to evaluate a reasonable range of alternatives.

B. RUS Must Analyze Not Only the Direct Impacts of the Proposed Project But Also Indirect and Cumulative Impacts of Past, Present, and Reasonably Foreseeable Future Actions

Under NEPA, agencies must take a "hard look" at the environmental consequences of a proposed project. *See Penneco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). Such a "hard look" requires analysis of the direct impacts of the proposed action as well as the indirect and

B-009-029: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

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B-009-030: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Potential environmental consequences and mitigation measures from the proposed project will be addressed in the Environmental Impact Statement.

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cumulative impacts of past, present, and reasonably foreseeable future actions. *See Custer County Action Ass'n v. Garvey*, 256 F.3d 1024, 1035 (10th Cir. 2001); RUS Bulletin 1794A-601 at 12. "Effects include ecological (such as the effects on natural resources and the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. All of these effects must be considered when analyzing alternatives to a proposed project. *See* RUS Bulletin 1794A-601 at 12. As RUS has emphasized, the EA "should indicate the basis for data presented and support the conclusions reached." *See id.* at 11 (emphasis omitted).

The following sections describe the potential direct, indirect, and cumulative impacts of the proposed Project and conclude with a non-comprehensive list of federal and state statutes, regulations, and executive orders for which an EA must be sufficiently detailed to address.

I. Direct Impacts

Direct effects are those "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a).

At a minimum, the proposed action may directly affect the following environmental concerns in the region: ecological (endangered and threatened species, other wildlife, wildlife habitat, and vegetation) and aesthetic.

a. Ecological Impacts

B-009-031

The potential ecological impacts to both the Ranch and the Project area more generally are staggering. As previously described, the Project area supports an extraordinarily rich diversity of ecotypes as well as several creeks and streams. Each of these ecotypes and water resources provides important habitat to the myriad wildlife species that rely on the undisturbed qualities of the area. Big game species such as bighorn sheep, elk, deer, antelope, and bear abound. Numerous endangered, threatened, candidate, and special concern species are likely to be present in the Project area including, for example, the Rio Grande cutthroat trout, Rio Grande sucker, bald eagle, greater sage-grouse, and Canada lynx. *See, e.g.*, CWC Resolution (attached as Exhibit 1) (deeming the Ranch "a wildlife property that has few, if any, equals in the United States"). A portion of the Project area may be suitable for reintroduction of the Gunnison sage-grouse. Indeed, Tri-State's own Macro Corridor studies, although far from comprehensive, begin to demonstrate the extent of the unique habitat and wildlife resources in the area. *See, e.g.*, 2008 AE/MCS at Figure 4-1 (illustrating the numerous avoidance and exclusion areas found in the proposed corridor); *id.* at 4-14 to 4-18 (describing the water resources and biological resources, including vegetation and wildlife, that will be impacted); May 2009 Macro Corridor Study at Figure 3-1 (illustrating the numerous avoidance and exclusion areas found in the

B-009-031: Environmental Consequences (In Review)

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proposed corridor); *id.* at 3-8 to 3-9 (describing the water resources and biological resources, including vegetation and wildlife, that will be impacted). Although the Ranch has evidenced its desire to protect this land in perpetuity, the construction of the power line threatens to destroy what the Ranch, CDOW, the Colorado Wildlife Commission, and so many others have sought to preserve.

B-009-032 |

With such an abundance of wildlife and habitat in the Project area, the direct ecological impacts from construction and operation of the line could be far-reaching. Significant vegetation could be lost. Creeks and streams, often described as crystal clear and as providing some of the best fishing and habitat in the country, could be clouded with disturbed sediment from construction or erosion. Service and fuel equipment, along with equipment staging areas, could directly impact both streams and riparian areas. Extensive soil disturbance might lead to increased susceptibility to erosion. Available habitat could be lost and fragmented. Wildlife species could be stressed, displaced, or simply depleted. And wildlife migration corridors could be impacted.

The following ecological concerns are especially critical based on the research that has been done to date:

B-009-033 |

- The Colorado Natural Heritage Program (“CNHP”) identifies potential conservation areas (“PCAs”) across Colorado. PCAs represent CNHP’s best estimate of the primary area required to support the long-term survival of global or state-rare species, infraspecies, or unique natural communities. The Sangre de Cristo PCA includes habitat in the Project area. Of note, and as further explained on CNHP’s website, CNHP has found Little Ute Creek (on Blanca Ranch) to have “high biodiversity significance,” Sangre de Cristo Creek (on Blanca Ranch) to have “very high biodiversity significance,” “North Fork Trinchera Creek (on Trinchera Ranch) to have “very high biodiversity significance,” and Culebra Creek Montane Complex (on Trinchera Ranch) to have “moderate biodiversity significance.” See Colorado Natural Heritage Program, *at* <http://www.cnhp.colostate.edu/> [hereinafter CNHP website].

B-009-034 |

- The Project area provides significant winter range for the bald eagle, which is listed by the state of Colorado as a threatened species and is protected under the Migratory Bird Treaty Act as well as the Bald and Golden Eagle Protection Act. See *id.*

B-009-035 |

- The Project area might provide habitat for the Golden Eagle, which is protected under the Bald and Golden Eagle Protection Act.

B-009-032: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Potential environmental consequences and mitigation measures from the proposed project will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-033: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-034: Wildlife (In Review)

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<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-035: Wildlife (In Review)

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B-009-036

- There are thousands of acres of sagebrush habitat on the Ranch that may be suitable for the greater sage-grouse and the Gunnison sage-grouse, both species of special concern in Colorado and candidates for federal listing.⁴ CDOW and the Ranch have been in discussions regarding the possible reintroduction of the Gunnison sage-grouse on the Ranch pursuant to a Candidate Conservation Agreement with Assurances (CCAA). See U.S. Fish & Wildlife Service: Gunnison Sage-Grouse, at <http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/> (stating that FWS issued CDOW a permit allowing it to enter into CCAs with private landowners). The construction of the Project could affect the ability of the Ranch to reintroduce the species and potentially could preclude further discussion with CDOW regarding this effort.

B-009-037

- Habitat for the Canada lynx, a federally threatened and state endangered species, exists on the Ranch and in the Project area. There is at least anecdotal evidence that residents in the Project area have spotted lynx on their property. See CNHP website.

B-009-038

- CDOW has identified Cottonwood Creek, located on the Ranch, as a potential reintroduction site for the Rio Grande Sucker, a state endangered species. A population of Rio Grande cutthroat trout, a state species of special concern and a federal candidate species, thrives in several creeks and streams on the Ranch. See, e.g., "Where The Wild Lands Are: Colorado," Trout Unlimited, at http://www.tu.org/atf/cf/%7BED0023C4-EA23-4396-9371-8509DC5B4953%7D/Roadless_CO_final.pdf, at 10 (attached as Exhibit 13); Letter from CDOW to Tri-State (August 12, 2008) (attached as Exhibit 8). CDOW has drawn from this population to reintroduce this species elsewhere in Colorado and also in New Mexico.

B-009-039

- Bighorn sheep, Colorado's state mammal, thrive at the Ranch and have a production area in Trinchera Ranch. Reintroduced on the Ranch in a cooperative agreement with CDOW, the bighorn sheep program has been so successful that CDOW has transplanted bighorn sheep from the Ranch to other locations in

⁴ The Gunnison sage-grouse was designated as a federal candidate species in 2000. Although federal protection under the Endangered Species Act was denied in 2006, a settlement of a lawsuit brought by environmental groups challenging this denial gives the FWS until June 30, 2010 to reconsider its denial. See Judith Kohler, *Gunnison Sage Grouse Reconsidered for Listing*, Denver Post, August 18, 2009, available at http://www.denverpost.com/breakingnews/ci_13161578 (attached as Exhibit 12).

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-036: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-037: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

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B-009-038: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

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Colorado and Utah. *See* CWC Resolution; CDOW: Private Ranch Finds Benefits in Working with DOW on Sheep Project, Feb. 8, 2005, at <http://dnr.state.co.us/newsapp/press.asp?pressid=3366> (attached as Exhibit 2).

B-009-040

- The black-footed ferret is a federally listed endangered species found in the Project area that depends upon prairie dogs as a source of food and uses their burrows for shelter. Any actions that kill prairie dogs or alter their habitat could prove detrimental to black-footed ferrets occupying the affected prairie dog towns. FWS has issued guidelines that require prairie dog towns be inventoried prior to the start of any construction.
- Numerous other federal and state endangered, threatened, candidate, and species of special concern exist within the Project area and should be studied in connection with the NEPA process. *See* Fish & Wildlife Service: Colorado Field Office County List, available at <http://www.fws.gov/mountain-prairie/endsp/countylists/colorado.pdf>; Colorado Division of Wildlife: Species of Concern, available at <http://wildlife.state.co.us/WildlifeSpecies/SpeciesOfConcern/>; Colorado Division of Wildlife: Threatened and Endangered List, available at <http://wildlife.state.co.us/WildlifeSpecies/SpeciesOfConcern/ThreatenedEndangeredList/ListOfThreatenedAndEndangeredSpecies.htm>.
- In addition to species possessing special designations, countless other wildlife species find habitat on the Ranch and in the Project area. Many of these species are found in the area year-round. These include, for example, black bears (summer and winter concentration); elk (summer and winter / severe winter range, summer and resident concentration, production areas, and seasonal migration corridor); mule deer (summer and winter / severe winter range, winter concentration); pronghorn (overall range, including severe winter range); ptarmigan (overall range); and turkey (overall and winter range, winter concentration). *See* CNHP website.

B-009-041

Until a full evaluation of the entire potential corridor is done, it is simply impossible to know (1) the type, location, and significance of habitat found throughout the Project area and (2) the concentration and production of various wildlife species, including threatened and endangered species, in this area. In order to determine the answers to these necessary questions and adequately consider the direct ecological impacts of the proposed project, Tri-State must consult with the FWS, NMFS, as well as CDOW and conduct field surveys for species and their habitats, as necessary. *See* 16 U.S.C. § 1536 (requiring consultation with FWS and NMFS to determine if an action is likely to adversely affect listed species and, if so, the preparation of a biological opinion by the FWS or NMFS); Colo. Stat. § 33-2-105(3), (4) (prohibiting the

B-009-039: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-040: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-041: Wildlife (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to wildlife from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

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“taking” of endangered or threatened species). Additionally, Tri-State should take into consideration the map of the highest potential conflict areas in the San Luis Valley, recently submitted to the Bureau of Land Management by The Nature Conservancy. *See* Letter from The Nature Conservancy of Colorado to BLM Colorado Field Office Team (April 14, 2009) (attached as Exhibit 14). This map shows areas of “significant and potentially irreplaceable natural resource values.” *Id.* Additionally, because Trinchera serves as the watershed for many farmers and residents in Costilla county, potential impacts to the ecology of the watershed should be studied.

B-009-042

Furthermore, Tri-State must disclose whether it plans to use herbicides during or after construction and how these constituents may impact surface water, groundwater, or nearby agricultural activities. Tri-State should consider run-off, sedimentation, compaction, chemical control, and soil erosion impacts from construction activities and ancillary facilities required for the Project’s construction, operation, and maintenance activities. This should be accomplished as part of a larger soil survey and analysis of the study area. Other impacts associated with construction and its associated traffic and transportation requirements need to be evaluated, including increased noise pollution and safety risks, fugitive dust and air quality degradation, and ecological impacts associated with traffic and on-site construction components of the Project. Consideration of the Project’s direct impacts is not complete absent an accounting and analysis of construction-related activities.

B-009-043

B-009-044

B-009-045

B-009-046

Unless and until such a hard look is taken at the countless potential direct ecological impacts from the Project, RUS will not have met its mandatory obligations under NEPA.

b. Aesthetic Impacts

NEPA was created in order “to assure for all Americans safe, healthful, productive, *aesthetically* and culturally pleasing surroundings.” 42 U.S.C. § 4331(b)(2) (emphasis added). “Aesthetic effects . . . are difficult to measure But the elusive character of aesthetics does not mean that such concerns are less weighty.” *See City of New Haven v. Chandler*, 446 F. Supp. 925, 930 (D. Conn. 1978). As RUS states:

The aesthetic impact of utility lines and associated facilities . . . may be significant in areas of high scenic beauty, scenic overlooks, scenic highways, wilderness areas, integral vistas, parks, national forests, and along wild and scenic, recreational, or national inventory rivers. Aesthetics should be considered in all projects. Moreover, for projects in visually sensitive areas, reasonable efforts should be taken to either avoid these areas entirely, or to

B-009-042: Water Resources (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to water resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-043: Construction (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts from construction of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-044: Construction (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts from construction of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-045: Geology and Soils (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to geology and soils from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

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design, construct, and operate the proposed project in such a way that aesthetic impacts are minimized.

RUS Bulletin 1794A-601 at 26-27. In fact, a scoping report for a similar transmission development requires the proponent to consider alternate routes that “avoid direct impacts or visual impacts . . . to the greatest extent possible.” *See* BLM Gateway West Transmission Line Scoping Report 7 (2008) (attached as Exhibit 15). Tri-State’s lack of proposed alternatives that avoid impacts to the Ranch and surrounding areas clearly circumvents this consideration.

The Ranch sits in one of the most pristine and beautiful areas of the country. As the Colorado Conservation Partnership has stated, this area provides some of the most stunning views in the country. Driving along Highway 160, one cannot help but to stop and witness the beauty of the area and the magnificent wildlife. Indeed, portions of Highway 160, as well as Highway 159, have been designated as a scenic byway for this very reason.

Many views in the Project area are spectacular and Blanca Peak dominates the visual landscape. It is the highest peak in the Sangre de Cristo Mountains, the fourth highest peak in Colorado, and the seventh highest in the contiguous United States.

The beauty of the area is evidenced by three separate scenic byways. Los Caminos Antiguos, running through San Luis, Fort Garland, Antonito, and Alamosa, provides spectacular views of the entire San Luis Valley, the San Juan Mountains, Blanca Peak, and the Sangre de Cristo range of the Rocky Mountains. *See* Los Caminos Antiguos: A Colorado Scenic & Historic Byway, at <http://www.loscaminos.com/>. The Highway of Legends, which travels through Cuchara, La Veta, and Walsenburg, provides stunning views of the Spanish Peaks in the San Isabel National Forest. *See* The Scenic Highway of Legends: A Colorado & National Forest Service Scenic Byway, at <http://www.sangres.com/shol/index.htm>. Finally, Frontier Pathways runs near Colorado City and Pueblo, providing views of the “lush Wet Mountain Range and the jagged Sangre de Cristo Mountains.” *See* Frontier Pathways, at <http://www.frontierpathways.org/index.html>. Disrupting these views with a power line affects not only those who live in the area but also every Coloradan and visitor to the San Luis Valley. *See* 2008 AE/MCS at 4-13 (“within the study area, portions of U.S. 160, SH 12 (Highway of Legends), SH 159, SH 150, and SH 17 are designated as scenic byways.”); *see id.* at Table 4-2 (noting the numerous scenic byways in the study area). It is therefore critical to carefully and fully consider the significant aesthetic impact that any east-west line would create, including a baseline assessment that can be used to determine the aesthetic impacts of the Project.

In recognition of its cultural, historical, and recreational nature, Congress recently established the Sangre de Cristo National Heritage Area (“the National Heritage Area”). Blanca Peak, along with the counties of Costilla, Conejos, and Alamosa, are included as part of this

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B-009-046: Construction (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts from construction of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-047: Visual and Aesthetic (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to visual and aesthetic resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

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legislation. *See* Pub. L. No. 111-11, 23 Stat. 1224. The National Heritage Area was established, in part, to preserve and protect “the natural, cultural, historic, scenic, and recreational resources” in the San Luis Valley. *See id.* at 1226. The Act encourages RUS to “consult and coordinate” with both the Secretary of the Interior and the newly formed Sangre de Cristo National Heritage Area Board of Directors regarding the effects of the proposed Project on the National Heritage Area “to the maximum extent practicable.” *See id.* at 1228.

2. Indirect Impacts

In addition to the above-mentioned direct impacts, Tri-State must consider and analyze the indirect impacts of the Project. Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8(b).

B-009-048

A number of foreseeable indirect impacts within the Project area must be considered, including construction and maintenance impacts, socio-economic effects, increased potential for forest fire, increased coal-fired power plant emissions, effects related to noise and electromagnetic fields, and impacts from related solar and wind generation development.

a. Construction and Maintenance Impacts

B-009-049

The construction process itself may result in a number of indirect impacts within the study area that must be studied. Invasive and noxious weeds can spread through areas of disturbed soils, for example, by construction and maintenance trucks. Similarly, hazardous materials may be introduced into the Project area. These indirect effects, as well as any other effects caused by the construction, operation and maintenance of the Project must be evaluated.

b. Socio-Economic Effects

The San Luis Valley is a geographically remote region of Colorado, with a unique heritage and particular economic challenges. The San Luis Valley’s economy is based in large part on agriculture and natural resources and on the natural beauty that has for years drawn new visitors and residents.

Trinchera Ranch, with 30 full-time employees, is one of the largest employers in Costilla County. Like many businesses and employers in the Valley, the success of Trinchera Ranch depends on the San Luis Valley’s natural resources and beauty. Trinchera is a working farm and ranch, with most of its revenue derived from agricultural products, hunting, and fishing. As an agricultural producer, Trinchera Ranch closely guards its watershed -- the same watershed that

B-009-048: Environmental Consequences (In Review)

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<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-049: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Potential environmental consequences and mitigation measures from the proposed project will be addressed in the Environmental Impact Statement.

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farmers throughout the community use. Any change that affects this watershed, as well as any change that affects the experience of hunters, fishermen, and other outdoorsmen, could be devastating.

The natural beauty of the San Luis Valley is also a tremendous asset. In addition to the aesthetic impact previously described, construction and operation of the transmission line may have a related socio-economic impact, especially in Costilla County, where undisturbed views of Blanca Peak and the Sangre de Cristo Mountains dominate the view along Highways 159 and 160. Accordingly, the socio-economic value of this view must be assessed.

It is possible that the transmission line could bring new development to the San Luis Valley, and it is also possible that a transmission line could harm existing industries, such as agriculture and tourism.

B-009-050

Therefore, potential socio-economic effects of the Project must be considered. "A conclusory statement that growth will increase with or without the project, or that development is inevitable, is insufficient; the agency must provide an adequate discussion of growth-inducing [indirect and cumulative] impacts." *See Davis*, 302 F.3d at 1122-23.

c. Potential for Forest Fire

Increased human activity and use of machinery in constructing the line could increase the potential for wildfire on the Ranch. Furthermore, recent articles have noted that birds colliding with transmission lines, and specifically raptor electrocutions, can cause forest fires. *See, e.g.*, Dry Conditions, Winds Leave California Open to Big Fires, August 16, 2009, at <http://www.cnn.com/2009/US/08/16/california.fires/index.html> (attached as Exhibit 16) (noting that 1300 firefighters called to fire sparked by a bird hitting a power line); Mike O'Sullivan, Forest Fires Force Many Californians from Their Homes, July 19, 2004, at <http://www.voanews.com/english/archive/2004-07/a-2004-07-19-29-1.cfm?moddate=2004-07-19> (attached as Exhibit 17) (noting that over 2,300 hectares had been burned after red-tail hawk was electrocuted on a power line and the bird's body ignited the brush). The 2006 Mato Vega fire, which burned approximately 14,000 acres on the Ranch, is a painful reminder of the region's and, in particular, the Ranch's, susceptibility to forest fires. Finally, power lines generally increase fire risk. *See, e.g.*, Utility Pays Forest Service \$14.75 Million in Wildfire Settlement (July 28, 2009), at <http://latimesblogs.latimes.com/greenspace/2009/07/wildfire-power-lines-pge.html> (attached as Exhibit 18) (noting that downed power lines have been blamed recently for a number of destructive wildfires in California). Accordingly, RUS must consider the fire potential to the study area as well as the potential with each alternative.

B-009-051

B-009-050: Socioeconomic Resources (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to social and economic resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-051: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Potential environmental consequences and mitigation measures from the proposed project will be addressed in the Environmental Impact Statement.

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d. Increased Coal-Fired Power Plant Emissions

Tri-State has stated that some of the new generation that will be transported over the proposed transmission line may come from coal-fired power plants. *See* Deposition of T. Green at 86:3-15 (attached as Exhibit 19) (“[S]ince we have an interconnected system, the lines have a potential to carry power from a variety of resources, whatever happens to be on the system.”). In addition to the existing coal-fired power on Tri-State’s system, RUS should consider whether the proposed new transmission lines will be used to accommodate additional coal-fired power from new plants under consideration by Tri-State. Coal combustion results in significant emissions of carbon dioxide, pegged as a primary culprit in global warming; particulates, such as fly ash and mercury; and radioactive trace elements, such as uranium. RUS, therefore, must consider the impacts from additional coal combustion that could be used to supply power along the proposed line.

B-009-052

e. Noise and Electromagnetic Fields

The effects of noise and electromagnetic fields (“EMF”) associated with the transmission line must be studied. The buzzing from transmission lines is a nuisance to not only the individuals that hear it but the wildlife that are impacted. For example, noise can impact birds by influencing their choice of nesting locations. *See* Noise Pollution Negatively Affects Woodland Bird Communities, According to CU-Boulder Study, University of Colorado at Boulder News Center, July 23, 2009 (attached as Exhibit 20). Additionally, EMF may pose a health risk to humans and wildlife. For instance, EMF can affect the strength of birds’ eggs. *See, e.g.,* Kimberly J. Fernie et al., *Effects of Electromagnetic Fields on the Reproductive Success of American Kestrels*, 73 *Physiological and Biochemical Zoology* 60 (2000) (attached as Exhibit 21). Each of these concerns, as well as any other indirect effects from noise and EMF, must be evaluated.

B-009-053

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f. Related Actions

Tri-State also must consider indirect effects from related actions. A related action, which is relevant for purposes of the NEPA analysis, is one that could not exist in the absence of the primary action -- that is, the actions are two links in a single chain. *See Sylvester v. U.S. Army Corps of Eng’rs*, 884 F.2d 394, 400 (9th Cir. 1989). Here, Tri-State’s objectives link the transmission project to the development of renewable energy resources such that the development of these renewable resources is inexorably intertwined with the construction of the transmission line. *See Border Power Plan Working Group v. Dep’t of Energy*, 260 F. Supp.2d 997, 1017 (S.D. Cal. 2003) (requiring agency conducting NEPA analysis of a potential transmission project to consider environmental impact of generation resources since the transmission line provided only means by which power from these resources would be

B-009-052: Project Alternatives (In Review)

Your email/letter/comment from has been received and your comment noted. A range of reasonable project alternatives and mitigation measures including the no action alternative will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-053: Electrical Characteristics (In Review)

Your email/letter/comment form has been received and your comment noted. Electrical characteristics of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-054: Electrical Characteristics (In Review)

Your email/letter/comment form has been received and your comment noted. Electrical characteristics of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at

<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-055: Electrical Characteristics (In Review)

Your email/letter/comment form has been received and your comment noted. Electrical characteristics of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

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<http://www.usda.gov/rus/water/ees/ea.htm>.

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B-009-057 transported). Thus, the impacts of large-scale concentrated solar and wind generation must be analyzed, including the environmental effect of “energy sprawl.” See Robert I. McDonald et al., *Energy Sprawl or Energy Efficiency: Climate Policy Impacts on Natural Habitat for the United States of America*, PLoS One, available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0006802> (attached as Exhibit 22); Juliet Eilperin & Steven Mufson, *Renewable Energy's Environmental Paradox: Wind and Solar Projects May Carry Costs for Wildlife*, Wash. Post, Apr. 16, 2009 (attached as Exhibit 23).

(i) Solar Energy Development

B-009-058 Tri-State must consider the impact of utility-scale solar facilities on the environment. Construction of utility-scale solar facilities raises a number of concerns regarding use of scarce water resources in the San Luis Valley. First, since the estimates for the amount of water required to operate solar thermal generation and other types of solar facilities are generally quite high, there is considerable controversy among proponents and opponents of the Project. See, *infra*, note 9; Chris Woodka, *Electricity Demands Tap Water Resources*, Pueblo Chieftain, Sept. 10, 2009 (attached as Exhibit 24) (quoting Stacy Tellinghuisen of Western Resource Advocates that “there is little difference in the water requirements of nuclear, coal, gas or solar plants”). Second, available water rights in the San Luis Valley are fully appropriated. See *Simpson v. Cotton Creek Circles, LLC*, 181 P.3d 252, 259 (Colo. 2008) (citing the water court for the proposition “that the hydrology and geology of the [San Luis] Valley are highly complex” and that the San Luis Valley’s “surface streams, its confined aquifers, and its unconfined aquifers are overappropriated”); see also *id.* at 257 (noting that House Bill 98-1011 recognized that “new withdrawals of groundwater from the aquifer system in [the San Luis Valley] could materially injure vested water rights”). Additionally, impacts caused by the large amount of land required for solar arrays also should be studied. Finally, economic impacts, both positive and negative, are likely in areas where utility-scale solar generation is proposed. These indirect effects, as well as any other reasonably foreseeable indirect effects, must be considered.

B-009-059

B-009-060

(ii) Wind Energy Development

B-009-061 The National Research Council of the National Academies published *Environmental Impacts from Wind Projects* (2007), which analyzes potential ecological and human impacts from wind energy development. See Paul Risser *et al.*, *Environmental Impacts of Wind Energy Projects* (2007). Tri-State should ensure that its analysis includes consideration of this and any other significant new information related to wind energy development generally and in southern Colorado specifically. Additionally, economic impacts, both positive and negative, are likely in areas where large-scale wind generation is proposed. These indirect effects, as well as any other reasonably foreseeable indirect effects, must be considered.

B-009-062

B-009-056: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Electrical characteristics of the proposed project and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-057: Cumulative Impacts (In Review)

Your email/letter/comment card has been received and your comment noted. Potential cumulative impacts and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-058: Water Resources (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to water resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-059: Land Use (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to land use from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement. The Environmental Impact Statement is anticipated to be completed in

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3. Cumulative Impacts

In addition to considering direct and indirect effects of the action, a cumulative impacts analysis must be done for existing, planned, and reasonably foreseeable future actions. The cumulative impact of a project is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions." 40 C.F.R. § 1508(c).

Thus, solar and wind development projects should be considered not only for their indirect impacts but also their cumulative impacts. Similarly, the well-documented environmental impacts from coal-powered electrical generation should be evaluated. This could include consideration of new transmission lines that Tri-State or other utilities anticipate building that would transport electricity generated by coal combustion as well as any new coal-fired power plants that Tri-State or other utilities anticipate constructing that would use the proposed line. See *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 508 F.3d 508, 550 (9th Cir.2007), amended in 538 F.3d 1172 (9th Cir. 2008) (observing that "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct"); see also *Mont. Envtl. Info. Ctr. v. Johannis*, No. 07-CV-01311 (D.D.C. July 20, 2007) (complaint alleging that RUS failed to consider the cumulative impacts of greenhouse gas emissions from coal plants); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003) (holding that for construction of a rail line to bring coal from Wyoming to power plants in Minnesota and South Dakota agency should consider air emissions from power plants). The Project may also have cumulative effects on groundwater and surface water resources in the region. For example, water depletions associated with electric generation and increased development could combine with the introduction of sediments to result in increased turbidity, increased relative concentration of water pollution, and other harms to water quality. Therefore, Tri-State should consider whether surface waters or any groundwater basins will be affected and analyze cumulative impacts to these and other aquatic resources. Finally, any new transmission capacity that is reasonably foreseeable should be considered for cumulative effects on the environment. All of these cumulative effects must be considered along with any other reasonably foreseeable cumulative impacts.

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late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-060: Socioeconomic Resources (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to social and economic resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-061: Environmental Consequences (In Review)

Your email/letter/comment form has been received and your comment noted. Potential environmental consequences and mitigation measures from the proposed project will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-062: Socioeconomic Resources (In Review)

Your email/letter/comment form has been received and your comment noted. Potential impacts to social and economic resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at
<http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-063: Water Resources (In Review)

Your email/letter/comment form has been received and your comment

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It should be noted that Tri-State's discussion must be sufficiently detailed to permit RUS to determine whether the Project will conflict with relevant environmental statutes, regulations, and executive orders including, but not limited to, the following that are potentially specifically relevant to construction of the Project on Ranch property:

- Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c
- Clean Air Act, 42 U.S.C. § 461
- Clean Water Act, 32 U.S.C. § 7401
- Council on Environmental Quality Regulations, 40 C.F.R. § 1500 *et seq.*
- Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*
- Farmland Protection Act, 7 U.S.C. § 4201 *et seq.*
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*
- Sangre de Cristo National Heritage Act, Pub-L 111-11, 123 Stat. 1224
- Wild and Scenic Rivers Act, 16 U.S.C. § 1271
- Wilderness Act, 16 U.S.C. § 1131
- E.O. 11514, "Protection and Enhancement of Environmental Quality"
- E.O. 11593, "Protection and Enhancement of the Cultural Environment"
- E.O. 11988, "Floodplain Management"
- E.O. 11990, "Protection of Wetlands"
- USDA Environmental Compliance Land Use Policy, Departmental Regulation 9500-3
- USDA Environmental Compliance Fish and Wildlife Policy, Departmental Regulation 9500-4
- USDA Environmental Compliance Policy on Range, Departmental Regulation 9500-5
- USDA's National Environmental Policy Act Final Policies and Procedures, 7 C.F.R. Part 1b & 1c
- USDA, NRCS Farmland Protection Policy, 7 C.F.R. Part 658
- USDA's Enhancement, Protection, and Management of the Cultural Environment, 7 C.F.R. Part 3100
- Nongame, Endangered, or Threatened Species Conservation Act, Colo. Rev. Stat. § 33-2-101 *et seq.*
- Colo. Rev. Stat. § 33-6-109

B-009-065 | Tri-State must also seek any required approvals from the Federal Aviation Administration since this Project may affect navigable airspace. Any construction over 200 feet

noted. Potential impacts to water resources from the proposed project and mitigation measures will be addressed in the Environmental Impact Statement.

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B-009-064: Cumulative Impacts (In Review)

Your email/letter/comment card has been received and your comment noted. Potential cumulative impacts and mitigation measures will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-065: NEPA Process (In Review)

Your email/letter/comment form has been received and your comment noted. Tri-State Generation and Transmission Association, Inc. has requested financial assistance from the USDA Rural Utilities Service (RUS), for their anticipated ownership interest in the proposed San Luis Valley – Calumet - Comanche Transmission Project. RUS has determined that funding Tri-State's ownership interest is a federal action requiring analysis under the National Environmental Policy Act (NEPA).

RUS is the lead federal agency for NEPA, and will consult with other federal, state, and local agencies, and affiliated tribes as well as adhere to applicable regulations.

Additional information regarding the NEPA process can be found on the RUS project website at <http://www.usda.gov/rus/water/ees/enviro.htm>. The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

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B-009-065 | above ground level requires notice to the FAA. *See* 14 C.F.R. § 77.13(a)(1). Moreover, operations of an airport in the vicinity may warrant further aeronautical study under FAA regulations.

In short, NEPA requires Tri-State to examine, more broadly and in much greater detail than it has currently done, the direct, indirect, and cumulative impacts of the Project and all reasonable alternatives.

C. Because the Project Is Likely to Significantly Affect the Quality of the Human Environment, RUS Should Prepare an EIS.

Under NEPA, federal agencies are required to prepare an EIS if a “major federal action may significantly affect the quality of the human environment.” *See* 42 U.S.C. § 4332(2)(c); *see also Davis*, 302 F.3d at 1111-12. “As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance” *Davis*, 302 F.3d at 1125 (quoting Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,038 (Council on Envtl. Quality 1981), *at* <http://www.nepa.gov/nepa/regs/40/40p3.htm>). To determine whether a proposed action significantly affects the quality of the human environment, RUS must consider both the context in which the action will take place and the intensity or severity of the action’s impact. *See* 40 C.F.R. § 1508.27. A broad range of factors should be considered when assessing the severity of the action’s impact, including the following of particular relevance to this region:

1. “Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” 40 C.F.R. § 1508.27(b)(3).

It can be said without reservation that the Ranch and others preserve, promote, and improve habitat for the area’s abundant wildlife and engage in extensive and heralded conservation practices. The Project area supports a rich diversity of ecotypes, provides some of the most spectacular views in the country, and enables public and private recreational and educational opportunities.

2. “The degree to which the effects on the quality of the human environment are likely to be highly controversial.” *Id.* § 1508.27(b)(4). Controversy reflects a “substantial dispute regarding the size, nature, or effect of the action, rather than public opposition to the proposed agency action.” *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002).

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This Project has generated considerable public discourse. Approximately 35 interested parties sought to participate in the proceeding before the Colorado PUC. Many of the same concerns voiced before the PUC are now at the forefront of the NEPA scoping process. There is considerable community debate regarding the need for the Project; the significance of the impact on habitat, wildlife, and aesthetics; alternative routes; and the significance of the environmental impacts from solar and wind energy development. As reported recently in the local media, the public cherishes both the intrinsic value of this “unique geologic area”⁵ and its historic value.⁶ Stakeholders take issue with disturbance of the study area’s undeveloped places⁷ without a clear

⁵ “*This is a unique geological area. People come from all over the U.S. and the world to see and experience what we have here.*” – David Gnaizda, resident of Huerfano County, expressing concern regarding the negative effect that the transmission line could have on the natural beauty of U.S. Highway 160 -- a designated scenic byway and proposed corridor for routing of the transmission lines. See Bill Knowles, Skepticism Rising High Over Tri-State, Xcel Plan, HuerfanoWorld.net, Aug. 28, 2009, available at <http://www.huerfanoworld.net/news15.html> [hereinafter Knowles] (attached as Exhibit 25).

⁶ “*San Luis is where Colorado began surrounded by heritage everywhere; a heritage that goes back thousands of years.*” – Statement of Art Hutchinson, superintendent of the Great Sand Dunes National Park, acting as Master of Ceremonies at the dedication of the Sangre de Cristo National Heritage Area. See Sylvia Lobato, National Heritage Area Dedicated, Conejos County Citizen, National Heritage Area Dedicated, Sept. 2, 2009, available at http://www.conejoscountycitizen.com/V2_news_articles.php?heading=0&story_id=550&page=72 (attached as Exhibit 26).

“*You can feel the heritage, you can feel what this area has meant to the people for so many years.*” – Dan Wenk, Interim Director of the National Park Service. See *id.*

“*Before Hispanic or Anglo settlers came to the valley, the Navajo regarded Blanca Peak as a holy site protected by the sand dunes just to the north of the 14,000-foot peak.*” – Statement of Art Hutchinson, superintendent of the Great Sand Dunes National Park. See Matt Hildner, New Sangre de Cristo Heritage Area Celebrated; Now Work Begins, Pueblo Chieftain, Aug. 30, 2009, available at <http://www.chieftain.com/articles/2009/08/30/news/local/doc4a9a085853e5c003320148.txt> [hereinafter Hildner] (attached as Exhibit 27).

⁷ “[W]e talk about urban sprawl. Why keep going into different areas building new corridors for them? I think that's the part most people are concerned about.” – Al Tucker, resident of Major's Ranch subdivision, expressing concern that Project presents an unnecessary redundancy. See *supra* Knowles.

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need for the Project.⁸ Furthermore, considerable concern has been expressed regarding the impacts that may be caused by the solar power generation associated with Tri-State's rationale for the Project.⁹ All of these comments serve to show the considerable controversy regarding the Project's size, nature, and effect upon the environment. Public comments received in response to the scoping process are expected to further illustrate the controversy regarding the Project and the need for an EIS.

3. "The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks." 40 C.F.R. § 1508.27(b)(5).

Much effort needs to be expended to determine the presence of wildlife along the various transmission corridors, the effect that constructing the power line will have on wildlife and its habitat both immediately and for the future, the effect on aquatic resources, and the increased risk of forest fire. That the secondary impacts from solar and wind generation involve unique and unknown risks is well-documented.

⁸ "There are two issues these two companies have failed to answer First, they've failed to show the necessity for the transmission lines, and second, they haven't addressed the issue of the loss of thousands of dollars in intrinsic value to the area because of the lost beauty caused by their transmission lines and towers." – David Gnaizda, resident of Huerfano County, expressing concern regarding the negative effects the transmission line could have on the region. *See id.*

⁹ "One of the trends we're starting to see in the West and Colorado is a lot of ag-to-industry transfers [of water] Any thermal-electric generation is going to increase water use." – Stacy Tellinghuisen, Western Resource Advocates. *See* Chris Woodka, Electricity Demands Tap Water Resources, Pueblo Chieftain, Sept. 10, 2009, available at <http://www.chieftain.com/articles/2009/09/10/news/local/doc4aa8d5a94c9c748385580.txt>.

"[L]arge-scale [solar] development, particularly if it used solar power technology, would raise the issue of large-scale water consumption and the potential for hazardous waste concerns." – Joe Mestas, Conejos County Commissioner, expressing concern regarding the effects of solar development on water supplies. *See supra* Hildner.

"This needs to be an ongoing dialogue. I think it affects all of us in the water community.... It's a bigger issue from a community standpoint." – Mike Gibson, San Luis Valley Conservancy District Manager, citing concerns regarding the effects of solar development on agricultural water supplies. *See* Ruth Heide, Concerns Heat Up Proposed Solar Projects, Valley Courier Online, Apr. 21, 2009, available at http://www.alamosanews.com/V2_news_articles.php?heading=0&story_id=12709&page=72 (attached as Exhibit 28).

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4. “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.” *Id.* § 1508.27(b)(7).

Consideration must be given to reasonably foreseeable actions that may be taken if this power line is built including, but not limited to, impacts from induced growth, increased emissions from coal-fired plants, construction of additional lines by other utilities, and large-scale solar and wind development.

5. “The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” *Id.* § 1508.27(b)(9). Failure to designate land as a “critical habitat” is not alone enough to find that its potential destruction is not significant for purposes of NEPA. *See Flowers*, 359 F.3d at 1275-76.

The Project area and, in particular, the Ranch may provide habitat for a number of federal and state endangered and threatened species as well as federal candidate and state species of special concern. Until a full evaluation of the potential transmission corridor and alternative transmission corridors is done, it is simply impossible to know the extent of the population of protected species in these corridors as well as whether there would be a potential impact to such species. The Endangered Species Act of 1973 (“ESA”) specifically prohibits the taking of any federally endangered or threatened species or their critical habitat. *See generally* 16 U.S.C. § 1531 *et seq.* CROW, pursuant to the Nongame, Endangered, or Threatened Species Conservation Act, creates the same prohibition for state endangered and threatened species. *See generally* Colo. Stat. § 33-2-101 *et seq.*; Colo. Stat. § 33-6-109.

6. “Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b)(10).

Trinchera believes that construction of this Project threatens violation of, at least, the following federal and state statutes, regulations, and executive orders: Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c; Clean Air Act, 42 U.S.C. § 461; Clean Water Act, 32 U.S.C. § 7401; Council on Environmental Quality Regulations, 40 C.F.R. § 1500 *et seq.*; Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*; Farmland Protection Act, 7 U.S.C. § 4201 *et seq.*; Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712; National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*; Sangre de Cristo National Heritage Act, Pub-L 111-11, 123 Stat. 1224; Wild and Scenic Rivers Act, 16 U.S.C. § 1271; Wilderness Act, 16 U.S.C. § 1131; E.O. 11514, “Protection and Enhancement of Environmental Quality”; E.O. 11593, “Protection and Enhancement of the

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Cultural Environment”; E.O. 11988, “Floodplain Management”; E.O. 11990, “Protection of Wetlands”; Nongame, Endangered, or Threatened Species Conservation Act, Colo. Stat. § 33-2-101 *et seq.*; Colo. Stat. § 33-6-109.

As the discussion above illustrates and as more fully described above in the complete comments, when RUS takes a “hard look” at the environmental consequences of this massive project -- indeed, one of the largest of its kind in Colorado -- it should conclude that the context and the severity of the Project are such that an EIS is necessary.

D. Tri-State Must Accurately Define the Purpose and Need for the Proposed Project

Because the “reasonableness” of alternatives considered necessarily depends on an agency’s objectives for the project, it is critical that Tri-State accurately characterize its need. *See Dombeck*, 185 F.3d at 1174-75; *see also* RUS Bulletin 1794A-601 at 6 (“The purpose of and need for the project should be provided in sufficient detail for RUS to independently evaluate the need for the project.”). In defining this need, Tri-State cannot define the purpose of its Project so narrowly so as to foreclose a reasonable consideration of alternatives and effectively limit accomplishment of the purpose to the single, preferred alternative. *See Davis*, 302 F.3d at 1119.

Tri-State defines its objectives for the Project in the Federal Register Notice:

The primary purpose for the proposed action is to improve the electric service and increase reliability for Tri-State and Public Service customers in the San Luis Valley and Front Range areas. The proposed action would also provide a transmission outlet for renewable energy generation in the San Luis Valley.

Meeting Notice, 74 Fed. Reg. 38391 (August 3, 2009); *see also* 2009 AE at 1-2 (“Tri-State’s main interests are driven by a need to improve system reliability for its Members”); *id.* (noting that PSCo has an additional objective of supporting proposed renewable energy development in the Walsenburg and San Luis Valley Areas). This statement raises several concerns.

Tri-State defines its primary need as providing reliable service to its customers. Part of Tri-State’s original justification for a new line was based on the possibility for voltage collapse during peak demand if additional transmission capacity was not developed. “Currently, if a single outage event occurs on the existing . . . transmission line, the remaining system would not be able to supply enough power to meet the peak loads in the area. This single event during periods of high demand would thus lead to a ‘voltage collapse’ throughout the San Luis Valley.”

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2008 AE/MCS at 1-2. *See also id.* at 3-1 (noting that during 40 hours in 2007 the peak load exceeded 111MW and thus presented the risk of voltage collapse). It is unclear from this statement and from Tri-State's studies, however, exactly what the risk of voltage collapse is today and what would be required to address that issue.

B-009-066 Moreover, Tri-State has stated that voltage collapse concerns have been alleviated. *See* 2009 AE at 1-3 ("Procedures have been implemented to shed Tri-State load in the area to avoid the risk of voltage collapse."). Although voltage drop scenarios may still need to be avoided, voltage collapse appears to no longer be a concern. Therefore, if the procedures put in place to address the risk of voltage collapse do not fully address the reliability issues in the San Luis Valley, Tri-State should specifically define what issues remain and what is needed to address those issues.

B-009-067 Furthermore, just this past August, PSCo reduced its demand forecasts for the foreseeable future. *See* PSCo Notice of Filing of Reduced Firm Demand and Energy Sales Forecast at 1 (attached as Exhibit 29) ("predicting significant reduction in the period of 2012 through 2015 of both energy sales and peak demand"); *id.* at Figure 3 (forecasting reductions ranging from 3.7% in 2009 to 0.7% in 2015); *see also* 2008 AE/MCS at 3-2 (noting that one alternative to the proposed project is to reduce peak loads). While Tri-State is not required to file such reports, Tri-State should indicate whether its demand forecasts similarly have been affected. Tri-State should reevaluate its stated objectives to determine whether, and to what extent, these reduced forecasts affect its reliability objective. Tri-State should clearly define how much, if any, additional generation must be provided in order to alleviate reliability concerns and, assuming additional generation is necessary, what type of generation would alleviate reliability concerns.

B-009-068 Tri-State also must consider demand side management and the prospective elimination or reduction of need for new transmission. Tri-State should address whether conservation and increased efficiency can avoid the need for new transmission. Such considerations may be addressed by a study of system efficiency that Tri-State recently agreed to conduct as the result of a settlement agreement. *See* Chris Woodka, *Energy Firm, Environmental Group Reach Settlement*, Pueblo Chieftain, Feb. 7, 2009 (attached as Exhibit 30). The outcome of this study could lead to reduced demand and therefore eliminate reliability concerns. Even if a need based on reliability concerns does exist, Tri-State must analyze whether any existing or proposed lines could be upgraded so as to eliminate the need for all or any part of this Project.

Tri-State defines a secondary need of transporting renewable energy from San Luis Valley. However, this secondary objective is by no means a current need as no concrete plans are in place to develop new solar generation in the San Luis Valley and, even if such plans were in place, there is no evidence to support the massive amount of transmission capacity that Tri-State is proposing. Furthermore, Tri-State and PSCo acknowledge that there is excess capacity

B-009-066: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-067: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-068: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

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in the existing transmission system that could accommodate at least some of the solar generation that PSCo hopes to develop in the future. *See* 2008 AE/MCS at 3-15. Accordingly, Tri-State should clearly elucidate why the current capacity over the existing system is not sufficient to support new renewable generation resources for the foreseeable future and how much, if any, capacity Tri-State reasonably anticipates will be required for renewable resources in the San Luis Valley.

B-009-070

Finally, recent public statements suggest that Tri-State has redefined the objective of the Project to require a secondary power supply from a source originating in eastern Colorado. In particular, Tri-State has commented that it requires a route that would not traverse north over Poncha Pass in order to avoid natural disasters, such as forest fires, that could simultaneously shut down multiple lines travelling along the same corridor. *See, e.g.,* Ruth Heide, Power Companies Seek Input, Valley Courier, Aug. 5, 2009, *available at* http://www.alamosanews.com/V2_news_articles.php?heading=0&story_id=13814&page=72 (attached as Exhibit 31). Despite this comment, Tri-State has neither performed any studies nor has any data to show that this is a legitimate concern that cannot be alleviated by established reliability criteria and regulations. Nor has Tri-State studied whether this remote contingency affects the feasibility of an alternative line to the north out of the San Luis Valley. Such speculative, unsupported concerns about a remote natural disaster contingency serve only to improperly narrow the range of alternatives that Tri-State must consider. However, as courts repeatedly admonish, an agency cannot define the purpose of a project so narrowly that its accomplishment can be achieved by only a single alternative -- in this case, Tri-State's preferred route running to the east. *See Davis*, 302 F.3d at 1119; *Richardson*, 565 F.3d at 708.

E. RUS Has Failed to Provide a Meaningful Opportunity to the Public, and in Particular to Trinchera, for Comment.

NEPA and its implementing regulations make abundantly clear that RUS must provide a real opportunity to the public to participate in the scoping process. *See, e.g.,* 40 C.F.R. § 1501.7 ("There shall be an early and *open* process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.") (emphasis added); *id.* § 1501.7(a)(1) ("As part of the scoping process the lead agency shall *[i]nvite the participation of . . . other interested persons* (including those who might not be in accord with the action on environmental grounds) . . .") (emphasis added); *id.* § 1506.6(a) ("Agencies shall *[m]ake diligent efforts to involve the public* in preparing and implementing their NEPA procedures.") (emphasis added); *id.* § 1506.6(c) ("Agencies shall *[h]old or sponsor public hearings or public meetings . . .*") (emphasis added)).

RUS itself has recognized this requirement in its own guidelines regarding the NEPA process. *See* 7 C.F.R. § 1794.13(a) (requiring RUS to "make diligent efforts to involve the

B-009-069: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

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B-009-070: Purpose and Need (In Review)

Your email/letter/comment form has been received and your comment noted. Project purpose and need will be addressed in the Environmental Impact Statement.

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public in the environmental review process”); *id.* § 1794.13(a)(5) (“Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action . . .”).

Public participation involves not just holding early and open public meetings, but providing the public an opportunity to comment on the proposed project. This opportunity to comment extends, of course, to written comments but also permits oral comments at public meetings. *See id.* § 1794.52(d) (“The scoping meeting(s) will be held in the area of the proposed action at such place(s) as RUS determines will best afford an opportunity for public involvement. *Any person . . . desiring to make a statement at the meeting may make such a statement in writing or orally.*”) (emphasis added).

B-009-071

Here, the notice given prior to the public scoping meetings was inadequate in light of the massive scope of this Project and its potential to dramatically alter myriad aspects of the southern Colorado landscape. Notice was published on August 3, 2009, merely two weeks before the first public scoping meeting. Although this notice follows RUS guidelines, it was simply not adequate to allow for meaningful participation by all interested parties for this Project. Moreover, contrary to RUS policy, several meetings were held in the morning when many people are required to be at work. *See* RUS Bulletin 1794A-603 at 8 (“The meeting should be scheduled on a weeknight after normal business hours. The time should not be set for normal working hours as generally the public would be at work and may not be able to attend the meeting.”). Had more notice been allowed, and had the meetings been scheduled at a reasonable time, participation may have increased. Meaningful participation by all interested parties is not only useful but required. The fact that the meetings were well attended, even when held during the day, is evidence that there is significant interest in this Project that should not be short-circuited by questionable timing tactics.

Second, given the size and scope of the Project, the time allowed to conduct the scoping meetings as well as the number of scoping meetings was inadequate. The six scoping meetings were held over a period of only four consecutive days.

Third, the public was allowed only 30 days to provide comments. Trinchera requested that this comment period be extended, given the extent of the new information that was provided for the first time at the scoping meetings, again contrary to RUS policy, as well as the extent of the scoping materials that need to be closely reviewed in order for the public to provide well-informed scoping comments. “Scoping documents should be available to the public for review at the time the RUS *Federal Register* or the borrower newspaper notice, whichever comes first, is published.” RUS Bulletin 1794A-603 at 8.

B-009-071: Public Involvement Process (In Review)

Your email/letter/comment form has been received and your comment noted. The project is in the planning and environmental review stages. Current project information will be available on the RUS project website, <http://www.usda.gov/rus/water/ees/ea.htm> and the Utilities' project website, <http://www.socotransmission.com/>.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

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Additionally, in order to submit comments, the public was directed to a Tri-State created and managed website. Not surprisingly, this website presents only the Tri-State perspective on what it believes to be the benefits and advantages of the transmission line. By being asked to provide comments through this website, the public necessarily would feel that construction of the Project is a foregone conclusion and that their comments would make little difference.

Finally, although these meetings were purported to be public, Trinchera's representatives repeatedly were excluded. At the Pueblo meeting on August 20, 2009, a Tri-State representative insisted that an attorney representative for Trinchera not "eavesdrop" on Tri-State's answers to questions by members of the public and that she should "leave," thus effectively precluding her from visiting any stations at which members of the public were in attendance conversing with Tri-State about the Project. At the Alamosa meeting on August 18, 2009, counsel for Tri-State instructed an attorney representative of Trinchera that he was not permitted to speak to any of the Tri-State representatives who were presenting information to the public about the Project at the meeting. Tri-State made a similar demand to Trinchera attorney representatives at the Gardner meeting on August 19, 2009 and the Colorado City meeting on August 20, 2009. Notably, the information that Tri-State presented to the public at these meetings was not previously available to the public, again contrary to RUS policy, and Trinchera was not permitted the same access to this information as other members of the public. See RUS Bulletin 1794A-603 at 8.

The fact that there is a pending proceeding before the Colorado PUC involving Tri-State and Trinchera is of no matter. Tri-State opted to hold these scoping meetings during the pendency of these proceedings over Trinchera's objections. The NEPA scoping process is, by definition, *open and public*.

B-009-073

Accordingly, Trinchera believes that it is prudent for RUS to schedule additional scoping meetings to cure the deficiencies from the previously held meetings. Not only would additional interested individuals and parties who did not previously get the opportunity to participate be benefitted, but Trinchera would be given the unfettered ability, as required under the Council for Environmental Quality regulations and RUS guidelines, to meaningfully participate in the scoping process.

B-009-072: Public Involvement Process (In Review)

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The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

B-009-073: Public Involvement Process (In Review)

Your email/letter/comment form has been received and your comment noted. The project is in the planning and environmental review stages. Current project information will be available on the RUS project website, <http://www.usda.gov/rus/water/ees/ea.htm> and the Utilities' project website, <http://www.socotransmission.com/>.

The Environmental Impact Statement is anticipated to be completed in late 2010 and will be available at <http://www.usda.gov/rus/water/ees/ea.htm>.

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IV. Conclusion

We hope that these comments are of assistance to RUS in completing its analysis of Tri-State's environmental review. Please send us a copy of the Scoping Report as soon as it becomes available. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy R. Macdonald', with a long horizontal flourish extending to the right.

Timothy R. Macdonald
Matthew J. Douglas
Holly E. Sterrett